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SENATE

{ REPORT
No. 788

AMENDING SECTION 207 OF THE LEGISLATIVE REORGANIZATION ACT OF 1946 SO AS TO AUTHORIZE PAYMENT OF CLAIMS ARISING FROM THE CORRECTION OF MILITARY OR NAVAL RECORDS

SEPTEMBER 20 (legislative day, SEPTEMBER 19), 1951.—Ordered to be printed

Mr. HUNT, from the Committee on Armed Services, submitted the
following

REPORT

[To accompany H. R. 1181]

The Committee on Armed Services, to whom was referred the bill (H. R. 1181) to amend section 207 of the Legislative Reorganization Act of 1946 so as to authorize payment of claims arising from the correction of military or naval records, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

PURPOSE OF THE BILL

The purpose of the bill is to authorize payment of claims arising from the correction of military and naval records.

EXPLANATION OF THE BILL

Prior to 1946, corrections in military and naval records could be made only when authorized by a private bill enacted by the Congress.

In order to obviate the consideration of a substantial number of these private bills by the Congress, section 207 of the Legislative Reorganization Act of 1946, approved August 2, 1946 (60 Stat. 812, 837), provides for the correction of military and naval records by the Secretaries of the armed services through boards of civilian officers or employees of the respective departments where such action is necessary to correct errors or remove injustices. The decision of the Comptroller General of the United States, B-61716, dated May 20, 1948, held that neither section 207 nor other legislation vests in the head of the specified department or in the Comptroller General any authority to order or direct the allowance or payment of any claim for money based on corrections made on military or naval records of an individual under the authority of that section. As a result of

the Comptroller General's decision, those individuals who were successful in showing that there was an error or an injustice in their records could not be paid the amounts that would have been due them if the error or injustice had not existed originally. These persons were in a position akin to that of having a right without a remedy. Their only recourse was in the introduction of a private bill to authorize the payments that would have accrued to them had there been no error or injustice in their record. This action obviously tended to counteract the purpose intended by section 207 of the Legislative Reorganization Act, namely, to relieve the Congress of the consideration of private bills to correct military or naval records.

SECTION BY SECTION ANALYSIS

Section 1

Subsection (a). Authority to establish boards for the correction of military and naval records.—This subsection empowers the Secretaries of the armed services and the Secretary of the Treasury (with respect to the Coast Guard) to correct any military or naval record where in their judgment such action is necessary to correct an error or to remove an injustice. In accomplishing the correction of such records the Secretaries act through boards of civilian officers or employees of their respective departments under procedures set up by the Secretaries, subject to the approval of the Secretary of Defense.

Corrections made by the boards are conclusive on all officers of the Government except when procured by means of fraud. This provision does not disturb the normal auditing function of the General Accounting Office but makes the findings of the boards not subject to review by other Government departments.

A request for correction must be filed by the claimant, his heirs at law, or legal representatives, within 3 years after their discovery of the alleged error or injustice, or within 10 years after the date of enactment of this act, whichever be the later. A failure to file within 3 years after discovery of the alleged error or injustice may be excused by the boards upon a finding that it is in the interest of justice to excuse such failure.

Subsection (b). Authority to make retroactive payments.—This subsection authorizes the payment out of applicable current appropriations of amounts paid as fines, forfeitures, or for losses of pay (including retired or retirement pay), allowances, compensation, emoluments, or other monetary benefits, which are found to be due on account of military or naval service as a result of a finding by the correction boards. Where no demand is presented by a legal representative of the estate of a deceased person, payment shall be made to the decedent's widow, widower, legal heirs, or beneficiaries, in the order of precedence set forth in the act of February 25, 1946, or as may be prescribed by applicable provisions of law relating to the kind of payment involved.

Subsection (c). Release.—This subsection provides that settlements made pursuant to subsection (b) constitute a complete release by the claimant.

Subsection (d). Authority to make continuing payments.—This subsection provides that applicable current appropriations shall be made available for continuing the pay (including retired or retirement pay), allowances, compensation, emoluments, and other monetary benefits to persons as a result of the correction of their military or naval records.

These payments may be made for 1 year following the date of enactment of this act or 1 year following the date of correction, whichever be the later, without the necessity of reenlisting or reappointing the person to his military or naval status. In order to receive continuing payments after this 1-year period has expired, the individual must be reappointed or reenlisted in his military or naval status, with its attendant responsibilities and obligations. The Secretary concerned is authorized to make such reenlistments and reappointments without regard to other qualifications.

Section 2. Effective date

Section 2 would make this act effective from the date of enactment of the Legislative Reorganization Act of 1946 so as to authorize retroactive payments in all proper cases where amounts are due as a result of the correction of military or naval records.

COST

The enactment of this legislation will result in a cost to the Government estimated at \$564,096.83, exclusive of the continuing payments to be made after September 1, 1951. These continuing payments accrue to those individuals who are entitled to retirement pay as a result of action by one of the correction boards.

RECOMMENDATIONS OF THE DEPARTMENT

The Secretary of Defense endorses the proposed legislation as is evidenced by the letter of the Assistant Secretary of Defense to the Speaker of the House of Representatives that is printed below:

ASSISTANT SECRETARY OF DEFENSE,
Washington.

Hon. SAM RAYBURN,
Speaker of the House of Representatives.

MY DEAR MR. SPEAKER: There is forwarded herewith a draft of legislation, to amend section 207 of the Legislative Reorganization Act of 1946 so as to authorize payment of claims arising from the correction of military or naval records.

This proposal is a part of the Department of Defense legislative program for 1951 and it has been approved by the Bureau of the Budget. The Department of Defense recommends that it be enacted by the Congress.

Purpose of the legislation.—Section 207 of the Legislative Reorganization Act of 1946, approved August 2, 1946 (60 Stat. 812, 837), provides for the correction of military and naval records by the Secretaries of the armed services through boards of civilian officers or employees of the respective departments where such action is necessary to correct errors or remove injustices. A decision of the Comptroller General of the United States, B-61716, dated May 20, 1948, held that "neither section 207 nor other legislation vests in the head of the specified department or in this office any authority to order or direct the allowance or payment of any claim for money, or to use appropriated funds to pay any claim for money, based on corrections made on military or naval records of an individual under the authority of that section." This proposal would amend section 207 so as to authorize the Secretaries of Defense and Treasury or their designees to make payment of any moneys which may be found due as a result of the correction of records in amounts not in excess of \$1,000 and would provide that payment of claims in excess of that amount should be specifically authorized by the Congress by appropriations or other acts. The proposal would also provide for the continuing payment of amounts found to be due persons whose claims had been paid as a result of the correction of their records. This legislation will be equally applicable to all of the Armed Forces including the Coast Guard. An ample precedent for limitation of the amount payable by administrative officers without specific sanction of the Congress reserving the right to the Congress to specifically

authorize payments in excess of such amounts may be found in the Federal Tort Claims Act and various other statutes authorizing Federal agencies to make payments of claims.

Legislative references.—Legislation identical to this proposal was included in the Department of Defense legislative program for consideration by the Eighty-first Congress, second session, approved by the Bureau of the Budget and introduced in the Congress (S. 2854 and H. R. 6813). The House Armed Services Committee held hearings on H. R. 6813 during June 1950 but no further action was taken by the Eighty-first Congress on S. 2854 and H. R. 6813.

Related legislation in the Eighty-first Congress included S. 3835, H. R. 2058, H. R. 3581, H. R. 3739, and H. R. 8643. None of these related bills are considered to meet the needs of the Department of Defense.

Cost and budget data.—No accurate estimate of the cost of the enactment of this legislation can be made at this time. The cost, however, will only involve such sums which would have been paid if proper payment had been made initially, plus any additional administrative expenses involved in executing the authority which would be granted under this proposal.

Department of Defense action agency.—The Office of the Secretary of Defense has been designated as the representative of the Department of Defense for this legislation.

Sincerely yours,

MARX LEVA.

CHANGES IN EXISTING LAW

In compliance with subsection 3 of rule XXIX of the Standing Rules of the Senate there is herewith printed in parallel columns the text of the provision of existing laws which would be repealed or amended by the provisions of the bill as reported by the committee.

EXISTING LAW

Act of August 2, 1946, 60 Stat. 837

SEC. 207. The Secretary of War, the Secretary of the Navy, and the Secretary of the Treasury with respect to the Coast Guard, respectively, under procedures set up by them, and acting through boards of civilian officers or employees of their respective departments, are authorized to correct any military or naval record where in their judgment such action is necessary to correct an error or to remove an injustice.

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"SEC. 207. (a) The Secretaries of the Army, Navy, and Air Force and the Secretary of the Treasury (with respect to the Coast Guard), respectively, under procedures set up by them, and acting through boards of civilian officers or employees of their respective Departments, are authorized to correct any military or naval record where in their judgment such action is necessary to correct an error or remove an injustice, and corrections so made shall be final and conclusive on all officers of the Government except when procured by means of fraud: *Provided*, That procedures set up by the Secretaries of the Army, Navy, and Air Force in accordance with this subsection shall be approved by the Secretary of Defense: *Provided further*, That no corrective action shall be taken under this subsection unless the request therefore be filed by claimant, his heirs at law, or legal representatives within three years after his or their discovery of the alleged error or injustice, or within ten years after the date of enactment of this Act, whichever be the later: *Provided further*, That the failure to file the request by claimant, his heirs at law, or legal representative, within three years after his or their discovery of the alleged error or injustice may be excused by

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such board of civilian officers or employees of the respective Departments upon finding by it that it is in the interest of justice to excuse such failure to file within the prescribed time in which event action shall be taken in the same manner as if the request had been filed within the three years as prescribed herein.

"(b) The Department concerned is authorized to pay, out of applicable current appropriations, claims of any persons, their heirs at law or legal representatives as hereinafter provided, of amounts paid as fines, forfeitures, or for losses of pay (including retired or retirement pay), allowances, compensation, emoluments, or other monetary benefits, as the case may be, which are found to be due on account of military or naval service as a result of the action heretofore taken pursuant to section 207 of the Legislative Reorganization Act of 1946, or hereafter taken pursuant to subsection (a) of this section: *Provided*, That in the case of deceased persons where no demand is presented by a duly appointed legal representative of the estate, payments otherwise due hereunder shall be made to the decedent's widow, widower, legal heirs, or beneficiaries, in the order of precedence or succession as may be prescribed by the applicable provisions of law relating to the kind of payment involved and when not otherwise so provided, in the order of precedence as set forth in the Act of February 25, 1946 (60 Stat. 30), or as may be prescribed by the applicable provisions of law relating to the kind of payment involved.

"(c) The acceptance by the claimant of any settlement made pursuant to subsection (b) of this section shall constitute a complete release by the claimant of any claim against the United States on account of such correction of record.

"(d) Applicable current appropriations shall be available for payment of such sums as may be due for continuing the pay (including retired or retirement pay), allowances, compensation, emoluments, and other monetary benefits to persons who shall have received payment pursuant to the provisions of subsection (b) of this section and who may be entitled to such continuing payments as a result of the correction of their military or naval records: *Provided*, That continuing payments are authorized to be made to such personnel for not more than one year following the date of the correction or one year following the date of enactment of this Act, whichever be the later, without

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the necessity of reenlistment, appointment, or reappointment to the grade, rank, or office to which such pay (including retired or retirement pay), allowances, compensation, emoluments, and other monetary benefits are attached, and such reenlistments, appointments, and reappointments are hereby authorized by the Secretary concerned without regard to other qualifications."

SEC. 2. This Act shall be effective from and after August 2, 1946.